DOCUMENT RESUME

ED 239 414 EA 016 382

TITLE	Guidelines for Local Educational Agencies for the Participation of Private School Students in ECIA, Chapter 1 Programs.
INSTITUTION	California State Dept. of Education, Sacramento. Office of Compensatory Education.
PUB DATE	83
NOTE	51p.
AVAILABLE FROM	Publication Sales, California State Department of Education, P.O. Box 271, Sacramento, CA 95802 ($3.25; California residents add sales tax).
PUB TYPE	Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Compensatory Education; *Compliance (Legal); Elementary Secondary Education; Federal Aid; *Federal Legislation; Federal Regulation; Federal State Relationship; Government School Relationship; Guidelines; Private Education; Private School Aid; *Private Schools; *School Districts; State Departments of Education
IDENTIFIERS	*California; *Education Consolidation and Improvement Act 1981

ABSTRACT

This document's purpose is to assist local educational agencies in providing compensatory education services to students in private schools and to provide clarification about compensatory education program responsibilities as mandated by the Education Consolidation and Improvement Act (ECIA) of 1981. The first of the document's two major parts juxtaposes sections of the federal law and its supporting regulations with state guidelines relating to policy, private school participation, fiscal records and constraints, and program planning and approval. The first part concludes with a summary of the responsiblilities of state and local educational agencies and individual private schools. The second part of the document contains five appendixes, including a copy of the "Private School Affidavit," portions of the California Education Code index referring to private schools, a summary of California laws relating to private schools, the full text of Chapter 1 of the ECIA from the Omnibus Budget Reconciliation Act (Public Law 97-35) of 1981, and its supporting federal rules and regulations. (JBM)

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Guidelines for Local Educational Agencies for the Participation of Private School Students in ECIA, Chapter 1 Programs

CALIFORNIA STATE
DEPARTMENT OF EDUCATION
Bill Honig, Superintendent of Public Instruction
Sacramento, 1983

EA 016 382

Guidelines for Local Educational Agencies for the Participation of Private School Students in ECIA, Chapter 1 Programs

Prepared under the direction
of the Office of Compensatory Education
CALIFORNIA STATE DEPARTMENT OF EDUCATION

Publishing Information

This document was prepared by Liz Tritel, Consultant, Office of Compensatory Education, California State Department of Education, 721 Capitol Mall, Sacramento, CA 95814. The document was edited and prepared for photo-offset production by the Bureau of Publications. The document was published by the Department of Education, printed by the Office of State Printing, and distributed under the provisions of the Library Distribution Act and *Government Code* Section 11096.

1983

Copies of this publication are available for $3.25 each, plus sales tax for California residents, from Publications Sales, California State Department of Education, P.O. Box 271, Sacramento, CA 95802.

A list of other publications available from the Department may be found at the back of this publication.

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Introduction

In 1965, the Elementary and Secondary Education Act provided for students who attend private schools to participate in federally sponsored compensatory education programs. The same provisions were included in the 1978 Amendment to the original statute and were retained in the Omnibus Budget Reconciliation Act of 1981.

Providing these services to private school students takes the coordination and cooperation of three entities: the state education agency, the local educational agency, and the private school. Each has specific responsibilities. When each group clearly understands its responsibilities, students are ensured of receiving the best educational services.

The purpose of this document is to assist local educational agencies in providing compensatory education services to students in private schools and to provide clarification about program responsibilities.

In its effort to produce a useful document, the staff in the State Department of Education sought assistance from school districts and offices of county superintendents of schools in California. The Department is grateful to the many people, both public employees and representatives of the private schools, who provided insight, wrestled with the concepts, and analyzed the drafts of the guidelines.

This document is divided into two major parts. The first one combines relevant sections of the federal law, the supporting regulations, and state policy. The laws and the regulations always appear on the left-hand page; corresponding state guidelines are on the right-hand page.

The second part of the document contains a number of appendixes. Here the user will find the full text of Chapter 1 of the Education Consolidation and Improvement Act (ECIA) from the Omnibus Budget Reconciliation Act of 1981; the federal rules and regulations supporting Chapter 1; a summary of California laws related to private schools; those portions of the California Education Code index that contain references to private schools; and a copy of the "Private School Affidavit."

Participation of Private School Students in ECIA, Chapter 1 Programs

Definitions of Terms and Acronyms

AFDC—Aid to Families with Dependent Children. The number of families receiving assistance under this program forms the basis for federal entitlements to school districts for ECIA, Chapter 1 programs.

Chapter 1—Chapter 1 is one of three chapters in the Education Consolidation and Improvement Act (ECIA). Chapter 1 replaces Title I of the Elementary and Secondary Education Act of 1965, as amended. Chapter 1 is designed to provide financial assistance to meet the instructional needs of educationally disadvantaged children. (See Appendix D for a copy of the law.)

ECIA—Education Consolidation and Improvement Act of 1981 is another name for the Elementary and Secondary Education Block Grant under Title V (Education Programs) of Public Law 97-35. The Education Consolidation and Improvement Act contains chapters 1, 2, and 3.

Educationally disadvantaged—The term applies to students whose educational attainment is below the level appropriate for their age.

Eligibility criteria—These are criteria used to determine which schools and students may receive Chapter 1 services. Money must be used in schools which serve a high concentration of low-income residents. Eligibility also applies to students who meet the criteria to receive program services. All students who qualify for services do not necessarily receive them.

HEW 441—Federal form HEW 441 is the form that private schools must file to assure compliance with the Office of Civil Rights mandates.

LEA—Local educational agency is a public authority legally constituted within a state for the administrative control, direction, or performance of services for public elementary or secondary schools.

Nonpublic school—This is a school not under public administrative supervision or control. The school may charge tuition and may be classified as either a nonprofit or profit-making institution.

Parochial school—A parochial school is a private school supported by and affiliated with a church or religious organization.

Private school—A school not under public administrative supervision or control is designated private. The school may charge tuition and may be classified as either a nonprofit or profit-making institution. The definition is the same for "private school" and "nonpublic" school.

"Private school affidavit"—This is a required statement to California's Superintendent of Public Instruction which must be filed annually by each private school in California. Once the statement is filed, the school's existence is acknowledged by the California State Department of Education. (See Appendix A for a copy of the form.)

Public school—A public school is one provided at public expense. The school is under public administrative supervision and direction. There is no tuition charge.

Pull-out program—A pull-out program is one in which the students receive services in a location other than the regular classroom.

SEA—State educational agency (SEA) is the officer or agency primarily responsible for the state supervision of public elementary and secondary education.

Selection criteria—These criteria form a set of standards adopted by an LEA to determine which students will receive Chapter 1 services.

Target area—A target area is the school attendance area designated as eligible for Chapter 1 services.

POLICY

Federal Law

Section. 551. This subtitle may be cited as the "Education Consolidation and Improvement Act of 1981."

CHAPTER 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

DECLARATION OF POLICY

Sec. 552. The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children, on the basis of entitlements calculated under Title I of the Elementary and Secondary Education Act of 1965, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Further, the Congress recognizes the special educational needs of children of low-income families, and that concentrations of such children in local educational agencies adversely affect their ability to provide educational programs which will meet the needs of such children. The Congress also finds that Federal assistance for this purpose will be more effective if education officials, principals, teachers, and supporting personnel are freed from overly prescriptive regulations and administrative burdens which are not necessary for fiscal accountability and make no contribution to the instructional program.

DURATION OF ASSISTANCE

Sec. 553. During the period beginning October 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this subtitle, make payments to State educational agencies for grants made on the basis of entitlements created under Title I of the Elementary and Secondary Education Act of 1965 and calculated in accordance with provisions of that title in effect on September 30, 1982.

Supporting Regulations

200.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children selected in accordance with Section 556 of Chapter 1; and
(b) Children in local institutions for neglected or delinquent children.

200.2 Applicability of regulations in this part.

(a) The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Chapter 1.

(b) The regulations do not apply to Chapter 1 projects operated by State agencies for handicapped children, neglected or delinquent children, or migratory children of migratory agricultural workers or migratory fishermen.

200.4 Acronyms that are frequently used.

The following acronyms are used frequently in this part:

"LEA" stands for local educational agency.
"SEA" stands for State educational agency.

POLICY

State Guidelines

Background Information

During the 1960s, the United States Congress passed an unprecedented number of social welfare and educational laws. One landmark law was the Elementary and Secondary Education Act of 1965. The numerous titles it incorporated focused on the use of federal money for the education of the nation's youth. Under Title I of this Act, federal money was earmarked to assist students residing in low-income areas who were academically behind their age-grade counterparts.

Title I provisions were further refined by the 1978 Amendment to the original statute (Public Law 95-561). In 1981, Chapter 1 of the Education Consolidation and Improvement Act of Public Law 97-35 kept the intent of Title I intact. Other titles and programs were placed in a block grant under ECIA, Chapter 2.

Since the inception of Title I, funds have been targeted for services to a specific group of students. Generally, these students must reside in a low-income area and be behind their age-grade peers academically. The services provided for these students must supplement the basic educational program.

Authorization for the use of federal funds to provide services for students attending a private school is found in Chapter 1 of the Education Consolidation and Improvement Act of 1981.[1] This authorization can be traced historically and legislatively to 1965 when the Elementary and Secondary Education Act made provision for the students who attended private schools to participate in Title I programs.[2] The same provisions were included in the 1978 Amendment to the statute,[3] and they have been retained in Chapter 1 of ECIA.[4] Thus, local educational agencies receiving Chapter 1 funds are required to make supplementary educational services available to qualified students who attend private schools.

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[1]Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, Section 557, 1981.

[2]Public Law 89-10, the Elementary and Secondary Education Act, Title I, Section 105, 1965.

[3]Public Law 95-561, amendment to Title I of the Elementary and Secondary Education Act of 1965, Section 130, 1978.

[4]Public Law 97-35, *loc. cit.*

POLICY

Federal Law

Sec. 558. (b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, REGULAR NON-FEDERAL FUNDS.—A local educational agency may use funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection, a local education agency shall not be required to provide services under this chapter outside the regular classroom or school program.

Supporting Regulations

200.62 Supplement, not supplant.

(a) Except as provided in paragraph (b) of this section, an LEA may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An LEA may exclude, for the purpose of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, state and local funds spent in carrying out special programs to meet the special educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(c) In order to demonstrate compliance with the supplement, not supplant requirement in paragraph (a) of this section, an LEA shall not be required to provide Chapter 1 services outside the regular classroom or school program.

POLICY

State Guidelines

ECIA, Chapter 1 programs are designed for students who live in low-income areas and whose academic achievement is below grade level.

Federal financial assistance to local educational agencies is based on the number of children counted in the Aid to Families with Dependent Children (AFDC) program.

Responsibilities

The state and local agencies have certain responsibilities under ECIA, Chapter 1:

SEA's Responsibility

To ensure that LEAs understand the federal law, the federal rules and regulations, and the state policies related to the participation of private school students in ECIA, Chapter 1, programs

LEA's Responsibilities

To define those neighborhoods with high concentrations of low-income residents

To develop criteria[5] for program eligibility

To provide for participating students services that are supplementary to ("over and above") the private school's basic educational program offered to all students

Each LEA defines those neighborhoods where there are high concentrations of low-income residents. These become the target areas. Based on a set federal formula, each LEA is entitled to receive a specific amount of money. This can vary from year to year, depending on the AFDC count.

In addition to defining target areas, each LEA must have criteria[5] for selecting participants. Not every student living within a target area will necessarily participate in this program.

Students do not have to come from low-income families, but they must live in a defined target area and must meet the LEA's criteria for participation. The program services for these selected students must supplement the private school's basic education program offered to all students.

In public schools the compensatory education program may be conducted in the regular classroom or in a pull-out situation. The same options may be used for providing program services to private school students. Parochial schools, however, are a special case because in such instances Chapter 1 services might be provided in a religiously affiliated school. It is very strongly recommended that services for students who attend these schools be conducted on a pull-out basis. An agreement to this effect can be reached locally by the LEA and the parochial schools.

[5]See the California Administrative Code, Title 5, Section 4414, and California Education Code Section 54005.

PRIVATE SCHOOL STUDENT PARTICIPATION

Federal Law

Sec. 557. (a) GENERAL REQUIREMENTS.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 555(c), 556(b)(2), (3), and (4), and 558(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

Supporting Regulations

200.70 Responsibility of LEAs.

(a)(1) In consultation with private school officials, an LEA shall provide educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools with special educational services and arrangements as will assure participation on an equitable basis of those children in accordance with the requirements in §§200.70—200.75 and Section 557(a) of Chapter 1.

(2) If the LEA decides to serve educationally deprived, low-income children under Section 556 (b)(1)(C) of Chapter 1, the LEA shall also provide Chapter 1 services to educationally deprived, low-income children in private schools as will assure participation on an equitable basis of those children in accordance with the requirements in §§200.70—200.75 and Section 557(a) of Chapter 1.

(b) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(c) The LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools.

(d)(1) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations.

(2) This employment or contract must be under the control and supervision of the public agency.

(e) In its application for Chapter 1 funds, the LEA shall make provision for services to educationally deprived children attending private elementary and secondary schools.

200.71 Factors used in determining equitable participation.

(a)*Equal expenditures.* Expenditures for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the LEA.

(b) *Services on an equitable basis.* The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable

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PRIVATE SCHOOL STUDENT PARTICIPATION

State Guidelines

The right of a student to attend a private school is provided for within the framework of California's compulsory full-time education law. A summary of the specific regulations and laws applicable to private schools appears in the *California Private School Directory*.[6] (See Appendix B for the index entries of the California Education Code related to private schools, parochial schools, and nonpublic schools; and see Appendix C for the summary of laws from the *California Private School Directory*.)

Under statute (PL 97-35), compensatory education services for private school students remain under the jurisdiction of the LEA. These are made available to a specific student population, not to the private school *per se*. In order for private school students to receive Chapter 1 services, the following conditions must be met:

1. The private school must express its interest in the services for its students.
2. Students must live within defined Chapter 1 attendance areas.
3. The students must meet the selection criteria defined by the LEA.

SEA's Responsibilities

The state educational agency's responsibilities for ensuring the participation of private school students in ECIA, Chapter 1, follow:

To provide each LEA with a current list of the private schools that filed an affidavit with the SEA no later than October 15

To determine that LEAs have made an initial contact with private schools regarding the possible provision of services to eligible students

To provide, on request, technical assistance concerning the design, implementation, and evaluation of the program

To maintain liaison between LEAs and private schools

To monitor LEA program responsibilities

Federal law requires each private school to file form HEW 441. This form is an assurance that the private school complies with the mandates of the Office of Civil Rights.

California law requires each private school to file annually an affidavit with the Superintendent of Public Instruction by October 15. Procedurally, private schools are instructed to submit the affidavits to the office of the county superintendent of schools of the county in which the school is located. The county, in turn, submits the affidavits to the California State Department of Education.

The affidavit is a statement to the Superintendent of Public Instruction in which the private school administrator verifies the names, addresses, enrollments, and other specified data for his or her private school. (See Appendix A for a copy of the affidavit.) The submission of this document is the only way the state educational agency is informed that a private school exists. In turn, the state agency uses the affidavits to compile the official list of private schools, the *California Private School Directory*.

The "Private School Affidavit" *and* form HEW 441 must be on file before private school students can participate in a Chapter 1 program.

LEAs' Responsibilities

The local educational agencies' responsibilities for ensuring the participation of private school students in ECIA, Chapter 1, follow:

To abide by the governing laws, rules, regulations, and policies established by state and federal governments

To contact all private schools having a current affidavit on file

To identify attendance boundaries within which students must live to be eligible for Chapter 1 services

To identify the districtwide selection criteria

To ensure that students selected for program services reside in the identified Chapter 1 target areas and meet the districtwide criteria

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[6]California Private School Directory, 1982. Prepared by the Bureau of Publications. Sacramento: California State Department of Education, 1982, p. 319.

PRIVATE SCHOOL STUDENT PARTICIPATION

Supporting Regulations

(Continued from page 8)

(in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

200.72 Funds not to benefit a private school.

(a) An LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools.

(b) An LEA shall use Chapter 1 funds to meet the special educational needs of children in private schools, but not for—

(1) The needs of the private schools; or

(2) The general needs of the children in the private schools.

PRIVATE SCHOOL STUDENT PARTICIPATION

State Guidelines

(Continued from page 9)

To maintain a list of program participants, including their addresses, by site (This list must be updated periodically.)

To provide for private school students compensatory education services that are equitable with services provided to public school students

Each LEA receiving Chapter 1 monies is required to make services available to eligible students attending private schools. All LEAs having private schools within their jurisdiction are expected to make the first contact and a reasonable effort to offer services to eligible students in private schools. LEAs are advised to keep a record of the contacts and the responses of the private schools.

Once the private schools have indicated an interest in the compensatory education services, the LEA must identify for the schools the attendance boundaries within which students must live and the districtwide selection criteria.

An LEA is responsible for providing the program services only to those students who live within its attendance boundaries. If a student attends a private school within the LEA but lives in another school district, it is the LEA of residence that is legally responsible for the compensatory education program.

Once the students are properly identified as eligible for the program, the LEA must determine how many private school students can be served. The intent of the law is to provide supplementary services with the available dollars and to do this in an equitable manner.

Example: If an LEA serves all of the eligible public school students, all of the eligible private school students are to be served.

Example: If a portion of the eligible public school students are served, then the same proportion of the private school students are to be served.

The law mandates that expenditures for private school students must be equal to those for public school students of the LEA. The expenditures must take into account the number of private school students to be served and their needs. Generally, the needs of the private school students are similar to those of public school students—deficiencies in basic skills. There are several ways an LEA can approach this.

Example

$$\frac{\text{Private school participants}}{\text{Private school participants plus public school participants}} \times \text{LEA Chapter 1 entitlement} = \text{Funds available for private school participation}$$

Example

$$\frac{\text{LEA Chapter 1 entitlement}}{\text{Number of participants (private and public schools)}} = \text{Average dollars per student}$$

The intent of the equal expenditure clause is to ensure that private school students receive their fair share of Chapter 1 services and that the services are comparable to those received by public school students.

The suggested formulas given above meet the equitable expenditure provision. When there is more than one private school site, the available funds are distributed to the sites based on the proportionate number of participants.

PRIVATE SCHOOL STUDENT PARTICIPATION

Federal Law

Sec. 557. (b) BYPASS PROVISION.—(1)If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) When the Secretary arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written

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Supporting Regulations

For the regulations supporting this portion of the statute, refer to Appendix E.

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PRIVATE SCHOOL STUDENT PARTICIPATION

State Guidelines

Once the available dollars are calculated, the LEA must then examine program equitability for the public and private school students. The following areas are suggestions for consideration by the LEA:

1. Personnel assignments to Chapter 1 programs
   a. Education and experience
   b. How assignments are made
   c. Use of certificated and noncertificated staff
2. Pupil-Chapter 1 staff ratio
3. Size of instructional group
4. Length of instruction period
5. Frequency of instruction
6. Access and availability of materials, supplies, and equipment
7. Staff development
8. Access to information and research
9. Adequacy of the facility where the program is conducted
10. Coordination with the regular program
11. Opportunities for consulting with teachers and parents

Private School's Responsibilities

To ensure private school student participation in ECIA, Chapter 1, the private school is responsible for the following:

To file the "Private School Affidavit" and form HEW 441 with the appropriate authorities

To advise the LEA that the school is interested or not interested in the compensatory education services

To abide by the governing laws, rules, regulations, and policies established by the federal government, the state, and the LEA

To determine whether students at the school reside in defined Chapter 1 attendance areas

To determine which students meet the LEA selection criteria

To maintain an updated list of Chapter 1 program participants

To determine cooperatively with the LEA the needs of the eligible students

After the initial contact by the LEA, the private school should respond, preferably in writing, indicating whether or not it is interested. Schools that are not interested in Chapter 1 services for their students have no further responsibilities.

Schools indicating an interest in the program must examine the identified Chapter 1 attendance area boundaries to determine whether their students live within them. Once the students are identified by qualified attendance areas, the school must then apply the districtwide criteria used for determining public school student eligibility.

There will be some cases in which students live in one school district and attend a private school located in another school district. In these instances, the private school should contact the LEA where the child lives to determine the Chapter 1 attendance areas and the districtwide selection criteria. The school district where the student resides is legally responsible for providing the student with Chapter 1 services. However, the district of residence and the district of attendance may work out an agreement to be sure that the student's needs are met in a way that permits the districts involved to do this expediently. Sometimes an exchange of services that are comparable is the solution. Another approach is to develop a contractual agreement that provides financial remuneration for the services provided. Where two LEAs interest to provide services for private school students, other areas to be considered are fiscal accountability, equitable services, inventories of equipment and materials, and program compliance with federal and state requirements. The SEA strongly believes that local flexibility to address these kinds of situations must be maintained.

California has not had any Chapter 1 programs operating under the bypass provision.

PRIVATE SCHOOL STUDENT PARTICIPATION

Federal Law

(Continued from page 12)

notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(c) Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965 prior to the effective date of this chapter shall remain in effect to the extent consistent with the purposes of this chapter.

FISCAL RECORDS AND CONSTRAINTS

Federal Law

Sec. 555. (a) GENERAL.—Each State and local educational agency shall use the payments under this chapter for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children.

(c) PROGRAM DESCRIPTION.—A local educational agency may use funds received under this chapter only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 556(b)(2), and which are included in an application for assistance approved by the State educational agency. Such programs and projects may include the acquisition of equipment and instructional materials, employment of special instructional and counseling and guidance personnel, employment and training of teacher aides, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, the construction, where necessary, of school facilities, other expenditures authorized under title I of the Elementary and Secondary Education Act as in effect September 30, 1982, and planning for such programs and projects.

(d) RECORDS AND INFORMATION.—Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter).

Supporting Regulations

200.55 Allowable costs.

(a) An LEA may use Chapter 1 funds only to meet the costs of project activities that—

(1) Are designed to meet the special educational needs of educationally deprived children identified under Section 556(b)(2) of Chapter 1;

(2) Are included in an application approved by an SEA under §200.14; and

(3) Comply with all applicable Chapter 1 requirements, including the assurances required under Section 556(b) of Chapter 1.

(b) The project activities referred to in paragraph (a) of this section may include the activities in Section 555(c) of Chapter 1.

200.56 Recordkeeping requirements.

(a) An SEA or LEA that receives Chapter 1 funds shall use fiscal control and fund accounting procedures that will ensure proper disbursement of an accounting for Chapter 1 funds.

(b) The SEA or LEA shall keep—

(1) Records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-Chapter 1 sources;

(2) Other records that are needed to facilitate an effective audit of the Chapter 1 project and that show compliance with Chapter 1 requirements; and

(3) Evaluation data collected under §200.54.

(c) All records required under this section must be retained—

(1) For five years after completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 1 project have been completed; and

(3) Until all findings and recommendations arising out of any audits or reviews concerning the Chapter 1 project have been finally resolved.

200.75 Construction.

No Chapter 1 funds may be used for repairs, minor remodeling, or construction of private school facilities.

FISCAL RECORDS AND CONSTRAINTS

State Guidelines

Only those costs directly related to the planned and approved program are permissible. No funds may be authorized for the construction, remodeling, or repairs of a private school.

Federal monies for compensatory education programs and projects must remain under the jurisdiction of a public agency. Personnel services, equipment, and instructional materials must be purchased by the local educational agency and remain under the ownership, control, and supervision of the local educational agency.

Equipment and instructional materials purchased for the compensatory education programs are to be used only by staff providing Chapter 1 services and by the identified program participants.

If a private school wishes to remove its students from the compensatory education program, the equipment and materials purchased with Chapter 1 funds must be removed from the private school site.

SEA's Responsibilities

The state agency's fiscal responsibilities under ECIA, Chapter 1, follow:

- To approve the LEA's application for the use of Chapter 1 funds
- To monitor the LEA's fiscal records
- To provide technical assistance

LEA's Responsibilities

The local educational agency's fiscal responsibilities under ECIA, Chapter 1, follow:

- To file an application for the use of Chapter 1 funds with the SEA
- To keep records of the amount and disposition of all Chapter 1 funds for a period of five years (See the supporting regulations for exceptions.)
- To maintain an inventory of the equipment and materials used by private school students
- To maintain evaluation records of participating students

Private School Responsibility

It is strongly recommended that an updated inventory of equipment and materials be kept at the private school. The private school should also maintain an updated program participant list and copy of the district selection criteria.

It is recommended that evaluation data for participating students be kept at each site where the program is conducted.

PROGRAM PLAN

Federal Law

Sec. 556(b) APPLICATION ASSURANCES.—The application described in subsection (a) shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this chapter), and that the programs and projects described—

(1)(A) are conducted in attendance areas of such agency having the highest concentrations of low-income children;

(B) are located in all attendance areas of an agency which has a uniformly high concentration of such children; or

(C) are designed to utilize part of the available funds for services which promise to provide significant help for all such children served by such agency;

(2) are based upon an annual assessment of educational needs which identified educationally deprived children in all eligible attendance areas, permits selection of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;

(3) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served and are designed and implemented in consultation with parents and teachers of such children;

(4) will be evaluated in terms of their effectiveness in achieving the goals set for them, and that such evaluations shall include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year; and

(5) make provisions for services to educationally deprived children attending private elementary and secondary schools in accordance with section 557.

Supporting Regulations

200.50 Annual needs assessment.

An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

(a) Identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools;

(b) Permits the selection of those educationally deprived children in the greatest need of special assistance; and

(c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

200.51 Sufficient size, scope, and quality of project.

An LEA that receives Chapter 1 funds shall use those funds for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

200.52 Prohibition against using Chapter 1 funds to provide general aid.

An LEA may use Chapter 1 funds only for projects that are designed and implemented to meet the special educational needs of educationally deprived children, identified in accordance with Section 556(b)(2) of Chapter 1, and who are included in an application for assistance approved by the SEA.

200.53 Consultation with parents and teachers.

(a) An LEA that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with parents and teachers of the children being served, including parents and teachers of children in private schools.

(b) To meet the consultation requirement in paragraph (a) of this section, an LEA may, but is not required to, establish and use parent advisory councils.

200.54 Evaluation.

An LEA that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of its effectiveness in achieving the goals set for it. This evaluation must include—

(a) Objective measurements of educational achievement in basic skills; and

(Continued on page 20)

PROGRAM PLAN

State Guidelines

A private school that wants federally funded compensatory education services for its eligible students must be aware of the program constraints and the legal responsibilities. The acceptance of services by the private school on behalf of its eligible students is an agreement to abide by all of the applicable laws, rules, regulations, and policies. The LEA may wish to put such an agreement in writing with its private schools. The LEA makes the commitment to abide by the applicable laws, rules, regulations, and policies when it signs the assurances contained in the application for funds.

Location of Service. There are several options available to the LEA:

1. Provide services at the private school site.
2. Provide services at the public school site.
3. Group students from several private schools together in one place.
4. Provide different programs at different sites.

If the services are provided at a specific site, they may be offered in the regular classroom or in a pull-out situation. The resolution of where the program is conducted is, again, an issue to be worked out between the LEA and the site(s). The LEA has the responsibility of using the available resources to provide service. However, the private school needs to make its needs and wishes known to the LEA so that both can work together to meet the student needs as efficiently and effectively as possible within the constraints of available resources.

Scope and Quality of the Program. Each program must be planned to address the assessed needs of the students who will participate. The number of students in the program and the specific services offered will depend on the resources available and the coordinated effort of the LEA and the private school authorities. The LEA needs to be aware of how the programs for private school students compare with the ones for public school students, both in scope and quality.

For further discussion refer to the most current edition of *School Program Development Manual,* published by the State Department of Education. (For ordering information see the list of selected Department publications at the end of this document.)

Once private school students have been properly identified, the LEA and the private schools must work out the details of providing services for the students cooperatively. The program plan must take into account the number of students who will be served, the location of the service, the needs of the students, the legal responsibilities of the LEA and the private school, and the available resources.

Number of Students to be Served. The intent of the law is to provide services which are supplementary to ("over and above") the basic education program. These services must be related to basic skills and are intended for all eligible students, given the availability of resources.

An LEA that does not serve eligible students from a private school that has indicated an interest in the program should be prepared to document the reasons for this decision.

SEA's Responsibilities

The state educational agency has the responsibility to approve a program plan for the use of Chapter 1 funds. The approval must be granted before funds are released to the LEA.

LEA's Responsibilities

The local educational agency's responsibilities for the ECIA, Chapter 1 program plan are as follows:

To work cooperatively with the private school staff to determine the specific services that will be provided for the participating students

To consult with private school teachers and parents on the design and implementation of the Chapter 1 program

To provide for private school participants a planned program based on their assessed needs

To evaluate the planned program

Supporting Regulations

(Continued from page 18)

(b) A determination of whether improved performance is sustained over a period of more than one year.

200.73 Use of public school employees.

An LEA may use Chapter 1 funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 1 services designed for children in a private school; and

(b) If those services are not normally provided by the private school.

200.74 Equipment and supplies.

(a) To meet the requirements of Section 557(a) of Chapter 1, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 1 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

PROGRAM PLAN

State Guidelines

Joint Responsibilities of the LEA and the Private School

Program Plan and Budget. The plan must contain a description of the supplementary education services provided to the private school students. The plan must be directly related to the assessed needs of the students served. It should contain a clear description of what the adults will do *and* what the students will do. Both the LEA and the private school should be very careful to see that the plan does not give direction to the private school staff and that the control and supervision of staff, materials, and equipment remain under the direction of the LEA.

Provision must be made for consulting with the private school teachers and the parents of the participants. Periodic meetings should be held during the planning of the program and during its implementation. Coordination with the private school should be built into the plan.

The budget must reflect the assessed needs of the students and the description of the program.

Student Need. The LEA is responsible for meeting the assessed needs of the private school students it is obligated to serve. This is true when the assessed needs are different from those being addressed in public schools.

The law requires that the needs of the students be assessed annually. Services for students must be directly related to their assessed needs. The services provided must supplement—that is, they must be in addition to—what all students receive.

Available student data should be analyzed to determine the specific areas of weakness. These identified weaknesses should be the focus of the planned program for the students.

Evaluation. The LEA is responsible for including private school students in the evaluation of the Chapter 1 programs conducted in the LEA.

Evaluation data submitted to the California State Department of Education must include data on students attending private schools.

Personnel and Supervision. One of the major responsibilities the LEA has is control and authority over the compensatory education program for private school students. This must be done without LEA interference in the private school operation. California law does not permit the LEA to control or in any way direct the private school activities.

The LEA is responsible for the appointment and supervision of personnel who provide Chapter 1 services to private school students. The staff providing these services may be LEA personnel; or, if contract services are used, the contract must be under the control and supervision of the LEA.

It is very strongly recommended that the LEA make the private school personnel and authorities, as well as the people who provide the actual services, aware of the LEA's responsibility in this area.

Materials, Equipment, and Supplies. Items necessary for implementing the program may be purchased by the LEA. The kinds of equipment, materials, and supplies purchased are governed by the same rules, regulations, and policies that apply to Chapter 1 programs conducted in public schools. The LEA retains control and ownership of such purchases. Equipment, materials, and supplies may be stored at a private school. They may be used only by the staff providing Chapter 1 services and the program participants.

PROGRAM APPROVAL

Federal Law

Sec. 556. (a) APPLICATION BY LOCAL EDUCATIONAL AGENCY.—Local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the programs and projects to be conducted with such assistance for a period of not more than three years, and such application has been approved by the State educational agency.

(b) APPLICATION ASSURANCES.—The application described in subsection (a) shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this chapter), and that the programs and projects described.

Supporting Regulations

200.13 Submission of LEA project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit to the SEA an application for a Chapter 1 project to be conducted during a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The LEA's Chapter 1 project application must include—

(1) A description of the Chapter 1 project to be conducted;

(2) The assurances required under Section 556(b) of Chapter 1; and

(3) The assurances required by Section 436(b)(2) and (b)(3) of GEPA.

(c) *Annual updating of information in the Chapter 1 application.* An LEA shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the LEA has maintained its fiscal effort as required by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(d) *Further updating of information in the application.* When there are substantial changes in the number or needs of the children to be served or the services to be provided, the LEA shall submit a description of those changes to the SEA.

200.14 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve an LEA's application for Chapter 1 funds, if that application meets the requirements in Section 556 of Chapter 1.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

200.59 SEA rule making and other responsibilties.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that its LEAs comply with all applicable statutory and regulatory provisions pertaining to Chapter 1.

(b) *SEA rule making.* To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(1) Chapter 1;

(2) The regulations in this part; or

(3) Other applicable Federal statutes and regulations.

PROGRAM APPROVAL

State Guidelines

Applications

The state educational agency and the local educational agency have specific responsibilities for the approval of program applications.

SEA's Responsibilities

It is the state educational agency's responsibility to approve the LEA application for the use of Chapter 1 funds. For further information about the application, contact the California State Department of Education, 721 Capitol Mall, Sacramento, CA 95814.

LEA's Responsibilities

The local educational agency's responsibilities regarding the approval of applications follow:

To offer to provide compensatory education services for students attending private schools. These schools do not have to be nonprofit institutions.

To file an application for the use of Chapter 1 funds with the SEA. The application must describe the Chapter 1 services to be provided.

To submit to the SEA an annual update of budget information and a report on the maintenance of fiscal effort.

State Rule Making

SEA's Responsibilities

It is the state educational agency's responsibility to enforce the provisions of ECIA, Chapter 1. The SEA has the legal authority to adopt policies and guidelines to carry out its Chapter 1 responsibilities. However, these procedures may not curtail or conflict with statutory provisions.

LEA's and Private School's Responsibilities

It is the LEA's and private school's responsibility to adhere to federal and state laws, policies, and guidelines

SUMMARY OF RESPONSIBILITIES

STATE EDUCATIONAL AGENCY	*LOCAL EDUCATIONAL AGENCY*
Policy	
Ensure that LEAs understand the federal law, the federal rules and regulations, and the state policies related to the participation of private school students in ECIA, Chapter 1 programs.	Define those neighborhoods with high concentrations of low-income residents. Develop criteria for program eligibility. Provide for participating students services that supplement the basic educational program.
Private School Student Participation	
Provide each LEA with a current list of the private schools having a current affidavit on file. Determine that LEAs have made an initial contact with private schools regarding the possible provision of services to eligible students. Provide, on request, technical assistance concerning the design, implementation, and evaluation of the program. Maintain liaison between LEAs and private schools. Monitor LEA program responsibilities.	Abide by the governing laws, rules, regulations, and policies established by state and federal governments. Contact all private schools having a current affidavit on file. Identify attendance boundaries within which students must live to be eligible for Chapter 1 services. Identify the districtwide selection criteria. Ensure that selected students reside in identified Chapter 1 target areas and meet the districtwide criteria. Maintain a periodically updated list of program participants, including their addresses, by site. Provide for private school students compensatory education services that are equitable with services provided to public school students.
Fiscal Records and Constraints	
Approve the LEA's application for the use of Chapter 1 funds. Monitor the LEA's fiscal records. Provide technical assistance.	File an application for the use of Chapter 1 funds with the SEA. Keep records of the amount and disposition of all Chapter 1 funds. Maintain an inventory of the equipment, supplies, and materials used by private school students. Maintain evaluation records of participating students.

SUMMARY OF RESPONSIBILITIES

PRIVATE SCHOOL

File the "Private School Affidavit" and form HEW 441 with the appropriate authorities.

Advise the LEA that the school is interested or not interested in the compensatory education services.

Abide by the governing laws, rules, regulations, and policies established by the federal government, the state, and the LEA.

Determine whether students at the school reside in defined Chapter 1 attendance areas.

Determine which students meet the LEA selection criteria.

Maintain an updated list of Chapter 1 program participants.

Determine cooperatively with the LEA the needs of the eligible students.

Recommendation: to maintain an updated inventory of equipment and materials kept at the private school; an updated program participant list; and a copy of the district selection criteria.

SUMMARY OF RESPONSIBILITIES

STATE EDUCATIONAL AGENCY	*LOCAL EDUCATIONAL AGENCY*
Program Plan	
Approve a program plan for the use of Chapter 1 funds.	Work cooperatively with the private school staff to determine the specific services that will be provided for the participating students. Provide for private school participants a planned program based on their assessed needs. Evaluate the planned program. Consult with private school teachers and the parents of participants on the design and implementation of the Chapter 1 program. Maintain authority and control over the compensatory education program. Appoint and supervise personnel who work with private school students. Maintain ownership and control over equipment, materials, and supplies purchased for the Chapter 1 program.
Program Approval	
Approve the LEA application for the use of Chapter 1 funds. Enforce its Chapter 1 responsibilities. Adopt policies and guidelines to carry out its Chapter 1 responsibilities.	Offer to provide compensatory education services for private school students. File with the SEA an application for the use of Chapter 1 funds. It must describe the services to be provided. Submit to the SEA an annual update of budget information and a report on the maintenance of fiscal effort.

SUMMARY OF RESPONSIBILITIES

PRIVATE SCHOOL

Work cooperatively with the LEA to determine the specific services that will be provided for the participating students.

Assist the LEA in the assessment of student needs.

Permit the LEA to exercise its authority in the areas specified by law.

Ensure that personnel, equipment, materials, and supplies are controlled by the LEA.

Adhere to federal and state laws, policies, and guidelines.

APPENDIX A

PRIVATE SCHOOL AFFIDAVIT

CALIFORNIA STATE DEPARTMENT OF EDUCATION
EDUCATION DATA MANAGEMENT SYSTEMS

NOTE: Please print or type and use additional pages as necessary.
This form should be prepared separately for each school and each address.
Return the original and two copies to the office of the County Superintendent of Schools by October 15, 1983.

PRIVATE SCHOOL AFFIDAVIT
FALL 1983

DEPARTMENT USE ONLY
IDENTIFICATION NO.

The Private School Affidavit, as required by California Education Code Section 33190, is to be used for reporting information required annually from private, full-time day and boarding schools. As this information will also be printed in a Private School Directory, please indicate the desired official listing for your school.

I. SCHOOL INFORMATION— Complete each item. If preprinted, review and insert any corrections above the preprinted information.

PRESENT NAME OF SCHOOL | TELEPHONE

STREET ADDRESS

MAILING ADDRESS

CITY | COUNTY | ZIP

FORMER NAME (If Applicable)

ADMINISTRATOR (Include Title) | ADMINISTRATOR (Include Title)

TYPE OF SCHOOL
☐ Coeducational ☐ Girls Only ☐ Boys Only

SCHOOL ACCOMMODATIONS
☐ Residential Boarding ☐ Day

CLASSIFICATION OF SCHOOL
☐ Church Affiliated — Denomination: _____
☐ Religious School But Not Church Affiliated
☐ Other – (nonreligious, nonchurch affiliated)

GRADES OFFERED | HIGH SCHOOL DIPLOMA IS OFFERED ☐ Yes ☐ No | PUBLIC SCHOOL DISTRICT IN WHICH SCHOOL IS LOCATED

NDSL Loan Cancellation – Full-time teachers in private schools having concentrations of students from low-income families may have National Direct/Defense Student Loans (NDSL) cancelled. If you believe your school can qualify in either or both categories check "YES", otherwise check "NO".
☐ Yes ☐ No

SCHOOL HAS BEEN GRANTED:
☐ Tax-exempt, nonprofit status under section 501(c)-3 of the 1954 U.S. Internal Revenue Code
☐ Property tax exemption under section 214 of the State Revenue and Taxation Code
☐ Tax-exempt, nonprofit status under section 23701(d) of the State Revenue and Taxation Code
☐ No tax exemption

II. STATISTICAL INFORMATION — Complete each item as appropriate.

Enrollment on a single date between October 1—15, 1983 (Do not include preschool enrollment)	Number of Pupils	Number of School Staff (Do not include preschool)	
Kindergarten			
Grade One		Full-Time Teachers	
Grade Two			
Grade Three			
Grade Four		Part-Time Teachers	
Grade Five			
Grade Six			
Grade Seven		Administrators	
Grade Eight			
Other Elementary			
Grade Nine			
Grade Ten			
Grade Eleven			
Grade Twelve			
Other Secondary			
TOTAL			
Twelfth Grade Graduates (1982-83)			

This school offers programs for children with the following handicaps: Check (✓)

☐ Mentally Retarded ☐ Visually Handicapped ☐ Specific Learning Disabled
☐ Hard of Hearing ☐ Seriously Emotionally Disturbed ☐ Deaf-Blind
☐ Deaf ☐ Orthopedically Impaired ☐ Multihandicapped
☐ Speech Impaired ☐ Other Health Impaired

III. DIRECTORS AND PRINCIPAL OFFICERS

NAME | POSITION
STREET ADDRESS
CITY | ZIP

NAME | POSITION
STREET ADDRESS
CITY | ZIP

NAME | POSITION
STREET ADDRESS
CITY | ZIP

IV. SCHOOL RECORDS— The attendance records, courses of study, names, addresses, and educational qualifications of the faculty, as required by Education Code Section 48222, are maintained at the following address and are true and accurate.

LOCATION ADDRESS
CITY | ZIP | If school is not in operation, enter closing date

V. LOCAL ORDINANCES— The school has complied with local city and/or county ordinances governing health, safety, and fire standards applicable to nonpublic schools.

DATE OF HEALTH DEPARTMENT INSPECTION | DATE OF FIRE DEPARTMENT INSPECTION

VI. CERTIFICATION

I hereby certify, under penalty of perjury, that to the best of my knowledge and belief the statements contained on this form are true and accurate.

SIGNATURE OF OWNER OR CHIEF ADMINISTRATIVE OFFICER ▶ | DATE

NAME OF PERSON PREPARING FORM | TITLE | TELEPHONE ( )

BEST COPY AVAILABLE

APPENDIX B

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APPENDIX C

SUMMARY OF CALIFORNIA LAWS RELATING TO PRIVATE SCHOOLS[1]

Prepared by the Legal Office,
California State Department of Education

This Summary does not include reference to every law pertaining to the establishment or maintenance of private schools in California. It does not contain the exact language of the laws referred to. Its purpose is to call attention to laws most frequently made the subjects of inquiry.

Basic Education Code References

Private school authorities should be aware of the various legal requirements governing the operation of the type of school over which they exercise authority. Requirements are contained in the Education Code with exceptions as noted.[2]

In California as in most states, the existence of private schools and the right of children to attend them are provided for within the framework of the compulsory full-time education law.

The following basic sections of the Education Code apply:

48200. Each person between the ages of six and sixteen years not exempted under the provisions of this chapter is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) of this part shall attend the public full-time day school or continuation school or classes for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of such pupil shall send the pupil to the public full-time day school or continuation school or classes for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located. Residency, for the purpose of attendance in the public schools, shall be determined by Section 17.1 of the Welfare and Institutions Code.

Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum schoolday established by law.

In addition to the above, children between sixteen and eighteen are required, unless exempted, to attend special continuation classes maintained by the governing board of the high school district in which they reside or by the governing board of a neighboring high school district. (Education Code Section 48400)

The following exemptions apply for children attending a full-time private day school or receiving private instruction:

Attendance in Private School

48222. Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall, except under the circumstances described in Section 30, be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year.

Exemptions under this section shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private school has complied with the provisions of Section 33190 of the Education Code requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction. The verification required by this section shall not be construed as an evaluation, recognition, approval, or endorsement of any private school or course.

Certain Mentally Gifted Children

48223. Children who are mentally gifted and who are being instructed in a private full-time day school by persons capable of teaching, where all or part of the courses of instruction required to be taught in the public schools of this state is taught in a foreign language with not less than 50 percent of the total daily instructional time taught in the English language, shall be exempted. The attendance of the pupils shall be kept pursuant to Section 48222.

Instruction by Tutor

48224. Children not attending a private, full-time, day school and who are being instructed in study and recitation for at least three hours a day for 175 days each calendar year by a private tutor or other person in the several branches of study required to be taught in the public schools of this State and in the English language shall be exempted. The tutor or other person shall hold a valid State credential for the grade taught. The instruction shall be offered between the hours of 8 a.m. and 4 p.m.

Jurisdiction of Department of Education

The California State Department of Education lacks jurisdiction over the establishment of private elementary and secondary schools except as follows:

Reporting Information to Superintendent of Public Instruction. Education Code Section 33190 states:

Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall between the 1st and 15th day of October of each year, file with the Superintendent of Public

[1]Reprinted from the *California Private School Directory, 1982.* Prepared by the Bureau of Publications. Sacramento: California State Department of Education, © 1982, pp. 319—327.

[2]Copies of the *Education Code* may be purchased from the Department of General Services, Publications Section, P.O. Box 1015, North Highlands, CA 95660; phone (916) 445-1020.

Instruction an affidavit or statement, under penalty of perjury, by the owner or other head setting forth the following information for the current year:

(a) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business.

(b) The address, including city and street, of every place of doing business of the person, firm, association, partnership, or corporation within the State of California.

(c) The address, including city and street, of the location of the records of the person, firm, association, partnership, or corporation, and the name and address, including city and street, of the custodian of such records.

(d) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation.

(e) The school enrollment by grades, number of teachers, coeducational or enrollment limited to boys or girls, and boarding facilities.

(f) That the following records are maintained at the address stated, and are true and accurate:

(1) The records required to be kept by Section 48222.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

Whenever two or more private schools are under the effective control or supervision of a single administrative unit, such administrative unit may comply with the provisions of this section on behalf of each of the schools under its control or supervision by submitting one report.

Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent by any means whatsoever, that the State of California, the Superintendent of Public Instruction, the State Board of Education, the California State Department of Education, or any division or bureau thereof, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course unless this is an actual fact.

The Superintendent of Public Instruction shall prepare and publish a list of private elementary and high schools to include the name and address of the school and the name of the school owner or administrator.

Exceptional Children

A private nonsectarian school enrolling exceptional children for whom payment is made by the public school district as required by Education Code Section 56365, et seq. must comply with minimum educational standards established by the Board of Education.

Jurisdiction of Department of Health

Schools serving physically handicapped, mentally impaired or incompetent children must be licensed by the Department of Health. (Health and Safety Code, sections 1500—1565)

Operation, Premises, Equipment—All Schools

Schools, in common with other enterprises, must meet certain requirements with respect to fire safety, health, and sanitation that are outside the scope of this summary.

Fire, Safety, Health, and Sanitation

Inquiries relating to fire safety should be addressed to the State Fire Marshal.

Inquiries relating to health and sanitation should be addressed to the State Department of Health or to the county health officer of the county in which the school is to be established.

It is suggested that inquiry be made of the city clerk of the city, if any, and the county clerk of the county in which a school is to be maintained to determine what city or county ordinances need to be met with respect to the establishment and conduct of a private school.

School Premises and Access Gates

The governing authority of a private school which is on land entirely enclosed by walls or fences must provide access gates of sufficient size to permit entrance of ambulances, police equipment, and fire-fighting apparatus, and, if the gates are to be locked, the locking devices must be designed to permit entrance by the use of chain or bolt-cutting devices. (Education Code Section 32020)

School Equipment Required

Fire Alarm System. The authorities of every private school must equip every school building having an occupant capacity of 50 or more students or containing more than one classroom with a dependable and operative fire warning system. The authorities must provide for the sounding of a fire alarm signal upon the discovery of fire and not less than once each calendar month in the following manner, except that when the fire alarm system used has a distinctive tone and is used for no other purpose, the manner of sounding the signal may be different. Education Code sections 32002—32004 state:

When the signal is given by means of an apparatus emitting intermittent sound signals, the signal shall be given by repeated successive short intermittent signals for a full period of ten (10) seconds, to be immediately followed by an intermission or period of silence of five (5) full seconds before the signal is repeated.

When the signal is given by means of an apparatus emitting prolonged or continuous sound signals, the signal shall be given by prolonged whistle blast or other sound signal continuously sounded for a full period of ten (10) seconds, to be immediately followed by an intermission or period of silence of five (5) full seconds before the signal is repeated.

In no case shall the signal be given for less than a one-minute period, and then only in the manner indicated.

First Aid Kit. The authorities of every private school must equip the school with a first aid kit which must be taken on any field trips by the person in charge of the pupils on the trip.

Whenever a field trip is conducted into an area which is commonly known to be infested by poisonous snakes, the first aid kit shall include a snake bite kit. (Education Code sections 32040—32044)

School Buses. With certain exceptions, motor vehicles carrying school pupils at or below the twelfth grade level to or from a private school or private school activities are subject to State Board of Education regulations as to the use of a school bus and to California Highway Patrol regulations as to the safe operation of a school bus. The driver of a school bus is required to have a California school bus or school pupil activity bus driver certificate. (Education Code Section 39830; Vehicle Code Section 2807.2)

Eye Protective Devices. The authorities of every private school must equip the school with industrial quality eye protective devices, as defined in Education Code Section 32032, and require them to be worn in courses when an individual is engaged in or observing an activity or using a hazardous substance likely to cause injury to the eyes. Some of those activities and substances are listed in Education Code Section 32031. (Education Code sections 32030—32034)

Pupils—All Schools

Certain laws relate to all students, whether they attend public schools or private schools.

Pupil Records

Personal information and access to written records concerning particular minor students may not be given or shown to any person except to the persons and under the circumstances described in Education Code Section 49076.

Education Code sections 49068 and 49069 state:

> Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent enrollment and scholarship record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records.
>
> Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children which are maintained by school districts or private schools. The editing or withholding of any such records is prohibited.

Prohibition Against Hazing

The hazing of private school pupils is a misdemeanor. (Education Code Section 32051)

Immunizations Required Before Admission

Health and Safety Code sections 3380—3390 require immunization against diphtheria, pertussis (whooping cough), tetanus, poliomyelitis, measles, mumps, and rubella before admission to any public or private school.

Discontinuance of Attendance

Discontinuance of attendance of, or denial of admission to, a physically handicapped, mentally retarded, or multiple handicapped child otherwise subject to the compulsory education law must be reported to the county superintendent of schools. (Education Code Section 48203)

General Requirements for Schools Attended by Children Between Six and Sixteen Years of Age

General requirements included in this summary cover such topics as the length of the school day, teachers, school records, language of instruction, and required reports.

Length of School Day

A private school attended by children between six and sixteen years of age in lieu of their attendance upon a public school must be a full-time day school. (Education Code Section 48222) A private school pupil, to be exempt from the state compulsory education law, must obtain verification by the attendance supervisor of the school district that the private school that he or she is attending has filed its annual affidavit with the Superintendent of Public Instruction in compliance with the requirements of Education Code Section 33190. (Education Code Section 48222)

A private school attended by a minor under Education Code Section 48222, in lieu of otherwise required attendance upon a public full-time day school, is not required to be maintained for the minimum school day required of public schools by Education Code sections 52326, 46110—46116, 46140—46144, and 46146, nor is it required to be maintained for not less than 175 days in each school year, except as otherwise provided in Education Code Section 41422, as are public schools under Education Code Section 41420. The term "half-day or more," as used in Education Code Section 48222 with respect to absence from attendance upon a private full-time day school, means one-half or more of the full-time day of the particular private school. (3 Ops. Cal. Atty. Gen. 257)

Education Code Section 48011 permits a child who has lawfully attended a private school kindergarten for one year to enter the first grade of a public school. A child who has attended a private school kindergarten and who is judged by the administration of a school district to be ready for first grade work may be admitted to the first grade at the discretion of the school administration of the district and with the consent of the child's parent or guardian, regardless of age. No child shall be admitted to the first grade of an elementary school pursuant to Section 48011 unless the child is at least five years of age.

Teacher Qualifications

The school must be staffed by persons capable of teaching. (Education Code Section 48222). (See requirements for teaching exceptional children, California Administrative Code, Title 5, Education, sections 3123—3125.)

Records of Attendance

The attendance of the pupils must be kept by the authorities of the private school in a register, and the record of attendance must indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year. (Education Code Section 48222)

The "State School Register" for public elementary schools supplied by the Superintendent of Public Instruction to public elementary school teachers under Education Code Section 44809 may be sold by the Department of Education to private elementary schools if the Department of Education finds the use of the register in private schools will be of benefit to public employees in checking private elementary school attendance under and for the purposes of Education Code sections 48290—48293 and 48260—48271. (1 Ops. Cal. Atty. Gen. 517)

Language of Instruction

English is a basic languge of instruction; however, the governing board of any school district and any private school may give instruction bilingually. Bilingual instruction is authorized to the extent that it does not interfere with the systematic, sequential, and regular instruction of all pupils in the English language. (Education Code Section 30) Certain exceptions for mentally gifted pupils are provided in Education Code Section 48223 and for certain children who are proficient in a foreign language, in Education Code Section 30.

Report of Severance of Attendance of Pupil

If a county board of education so provides by regulation, a private school must report to the county superintendent the severance of attendance of a pupil between ages eight and eighteen, whether by exclusion, expulsion, exemption, transfer, suspension beyond ten days, or other reason. (Education Code Section 48202)

Courses of Study for Schoolchildren Between Six and Sixteen Years of Age

Education Code Section 48200 calls for compulsory public school education for children between ages six and sixteen years. Section 48222 exempts those children who are being instructed in a private full-time day school and provides that such schools shall offer instruction in the several branches of study required to be taught in the public schools of the state.

Courses Required for Grades One Through Twelve

The following is a list of those subjects required to be taught in both elementary and secondary public schools, and hence required by virtue of Education Code Section 48222 to be taught in all private schools attended by children between six and sixteen years of age:

> 51202. The adopted course of study shall provide instruction at the appropriate elementary and secondary grade levels and subject areas in personal and public safety and accident prevention, including emergency first aid instruction, instruction in hemorrhage control, treatment for poisoning, resuscitation techniques, and cardiopulmonary resuscitation when appropriate equipment is available; fire prevention; the protection and conservation of resources, including the necessity for the protection of our environment; and health, including the effects of alcohol, narcotics, drugs, and tobacco upon the human body.

Courses of Study for Grades One Through Six

In addition to the subjects listed in the preceding paragraph, the course of study for grades one through six shall include instruction, beginning in grade one and continuing through grade six, in the following areas: English, mathematics, social sciences,[1] science, fine arts, health, and physical education. (Education Code Section 51210)

Courses of Study for Grades Seven Through Twelve

In addition to the subjects listed in the section titled "Courses Required for Grades One Through Twelve," the course of study for grades seven through twelve shall offer instruction in the following areas: English, social sciences,[1] foreign language or languages (beginning not later than grade seven), physical education,[2] science, mathematics, fine arts, applied arts, vocational-technical education, and automobile driver education (including education in the safe operation of motorcycles). (Education Code Section 51220)

(NOTE: Education Code Section 37113 permits the enrollment in public high schools of pupils in private schools, space permitting, in vocational and shop classes and in classes relating to the natural and physical sciences.)

Requirements for High School Graduation

Education Code Section 51225 states:

> No pupil shall receive a diploma of graduation from grade twelve who has not completed the course of study and met the standards of proficiency prescribed by the governing board. Standards of proficiency in basic skills shall be such as will enable individual achievement and ability to be ascertained and evaluated. Requirements for graduation shall include:
>
> (a) English
> (b) American history

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[1]Instruction in social sciences shall include the early history of California and a study of the role and contributions of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America, with particular emphasis on portraying the roles of these groups in contemporary society (Education Code sections 51211, 51213, 51221, and 51227).

Instructions required by subdivision (b) of Section 51220 in the area of study of social sciences shall also provide a foundation for understanding the wise use of natural resources.

[2]Certain students may be exempt from physical education classes. (Education Code Section 51242)

(c) American government
(d) Mathematics
(e) Science
(f) Physical education, unless the pupil has been exempted pursuant to the provisions of this code
(g) Such other courses as may be prescribed

Schools Attended by Children Between Sixteen and Eighteen Years of Age

A private full-time day school that is attended by children between sixteen and eighteen years of age who otherwise would be required to attend public schools is not required to meet any specific standards or requirements except such as are otherwise noted. Privately maintained "part-time classes" attended by children between sixteen and eighteen years of age who otherwise would be required to attend compulsory continuation classes maintained by a school district must be "satisfactory." For the student to be exempt from compulsory continuation education, a private school must obtain verification by the attendance supervisor of the school district that the private school has complied with the provisions of Education Code Section 33190 requiring annual filing of an affidavit of prescribed information with the Superintendent of Public Instruction. (Education Code Section 48415)

Miscellaneous Provisions

The state provides a limited number of scholarships to graduates of California high schools for use in California institutions of higher learning. (Education Code sections 69500—69813) The program is conducted by the Student Aid Commission, 1410 Fifth St., Sacramento, CA 95814. That commission is also authorized to administer any federal scholarship program. (Education Code sections 69740—69743)

Fellowships for Graduate Study

The state provides a fellowship program for graduate study by residents of California who have an A.B. degree, the award to be used in colleges or universities accredited by the Accrediting Commission for Schools, Western Association of Schools and Colleges (1614 Rollins Road, Burlingame, CA 94010). (Education Code sections 69670—69682)

Special Compensatory Education Programs for Disadvantaged Children

School districts applying for federal funds under the federal Elementary and Secondary Education Act of 1965 may use private school facilities within their compensatory education plan. (Education Code sections 54400—54465)

Certificates of Proficiency

Proficiency Examination. Any person sixteen years of age or older, including those persons enrolled in private schools, may request to have his/her proficiency in basic subject matter skills verified based upon criteria established by the State Department of Education. The State Board of Education shall award a "certificate of proficiency" to persons who demonstrate such proficiency. The certificate of proficiency shall be equivalent to a high school diploma. (Education Code Section 48412) Application to take the periodic proficiency examination may be obtained at any public high school in the area of the person's residence.

Audiovisual Materials

Use of Audiovisual Materials. A county superintendent of schools, with the approval of the county board of education, may provide nonpublic schools with the use of audiovisual curriculum materials, including equipment and apparatus under his control. The superintendent shall charge the nonpublic school for his costs of handling of, and the loss, destruction, or damage to, such equipment. (Education Code Section 1251)

Child Abuse

Penal Code Section 11161.5 provides that any school personnel who observe physical injuries which appear to have been inflicted by other than accident are required to notify the appropriate law enforcement and welfare offices within 36 hours by telephone and in writing. School personnel are not liable for making these reports unless they know or should have known the report was false.

APPENDIX D

PUBLIC LAW 97-35 OMNIBUS BUDGET RECONCILIATION ACT

Section. 551. This subtitle may be cited as the "Education Consolidation and Improvement Act of 1981."

CHAPTER 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

DECLARATION OF POLICY

Sec. 552. The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children, on the basis of entitlements calculated under Title I of the Elementary and Secondary Education Act of 1965, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Further, the Congress recognizes the special educational needs of children of low-income families, and that concentrations of such children in local educational agencies adversely affect their ability to provide educational programs which will meet the needs of such children. The Congress also finds that Federal assistance for this purpose will be more effective if education officials, principals, teachers, and supporting personnel are freed from overly prescriptive regulations and administrative burdens which are not necessary for fiscal accountability and make no contribution to the instructional program.

DURATION OF ASSISTANCE

Sec. 553. During the period beginning October 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this subtitle, make payments to State educational agencies for grants made on the basis of entitlements created under Title I of the Elementary and Secondary Education Act of 1965 and calculated in accordance with provisions of that title in effect on September 30, 1982.

APPLICABILITY OF TITLE I PROVISIONS OF LAW

Sec. 554. (a) PROGRAM ELIGIBILITY.—Except as otherwise provided in this subtitle, the Secretary shall make payments based upon the amount of, and eligibility for, grants as determined under the following provisions of Title I of the Elementary and Secondary Education Act in effect on September 30, 1982:

(1) Part A—"Programs Operated by Local Education Agencies":
  (A) Subpart 1—"Basic Grants"; and
  (B) Subpart 2—"Special Grants."

(2) Part B—"Programs Operated by State Agencies":
  (A) Subpart 1—"Programs for Migratory Children";
  (B) Subpart 2—"Programs for Handicapped Children";
  (C) Subpart 3—"Programs for Neglected and Delinquent Children"; and
  (D) Subpart 4—"General Provisions for State Operated Programs."

(b) ADMINISTRATIVE PROVISIONS.—The Secretary, in making the payments and determinations specified in subsection (a), shall continue to use the following provisions of Title I of the Elementary and Secondary Education Act as in effect on September 30, 1982:

(1) Part E—"Payments":
  (A) Section 191—"Payment Methods";
  (B) Section 192—"Amount of Payments to Local Educational Agencies";
  (C) Section 193—"Adjustments Where Necessitated by Appropriations"; and
  (D) Section 194—"Payments for State Administration," subject to subsection (d) of this section.

(2) Part F—"General Provisions":
  (A) Section 197—"Limitation on Grants to Puerto Rico"; and
  (B) Section 198—"Definitions" and conforming amendments to other Acts, except that only those definitions applicable to this subtitle shall be used.

(c) APPLICABILITY RULE.—The provisions of Title I of the Elementary and Secondary Education Act of 1965 which are not specifically made applicable by this chapter shall not be applicable to programs authorized under this chapter.

(d) AMENDMENT.—Section 194(a)(1) of the Elementary and Secondary Education Act of 1965 is amended by striking out "1.5 per centum" and inserting in lieu thereof "1 per centum."

AUTHORIZED PROGRAMS

Sec. 555.(a) GENERAL.—Each State and local educational agency shall use the payments under this chapter for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children.

(b) PROGRAM DESIGN.—State agency programs shall be designed to serve those categories of children counted for eligibility for grants under section 554(a)(2) in accordance with the requirements of this chapter.

(c) PROGRAM DESCRIPTION.—A local education agency may use funds received under this chapter only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 556(b)(2), and which are included in an application for assistance approved by the State educational agency. Such programs and projects may include the acquisition of equipment and instructional materials, employment of special instructional and counseling and guidance personnel, employment and training of teacher aides, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, the construction, where necessary, of school facilities, other expenditures authorized under Title I of the Elementary and Secondary Education Act as in effect September 30, 1982, and planning for such programs and projects.

(d) RECORDS AND INFORMATION.—Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter).

APPROVAL OF APPLICATIONS

Sec. 556 (a) APPLICATION BY LOCAL EDUCATIONAL AGENCY.—Local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the programs and projects to be conducted with such assistance for a period of not more than three years, and such application has been approved by the State educational agency.

(b) APPLICATION ASSURANCES.—The application described in subsection (a) shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this chapter), and that the programs and projects described—

(1)(A) are conducted in attendance areas of such agency having the highest concentrations of low-income children; (B) are located in all attendance areas of an agency which has a uniformly high concentration of such children; or (C) are designed to utilize part of the available funds for services which promise to provide significant help for all such children served by such agency;

(2) are based upon an annual assessment of educational needs which identified educationally deprived children in all eligible attendance areas, permits selection of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;

(3) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served and are designed and implemented in consultation with parents and teachers of such children;

(4) will be evaluated in terms of their effectiveness in achieving the goals set for them, and that such evaluations shall include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year; and

(5) make provisions for services to educationally deprived children attending private elementary and secondary schools in accordance with section 557.

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

Sec. 557. (a) GENERAL REQUIREMENTS.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 555(c), 556(b)(2), (3), and (4), and 558(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

(b) BYPASS PROVISION.—(1) if a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) When the Secretary arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of Title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28, United States Code.

(c) Any bypass determination by the Secretary under Title I of the Elementary and Secondary Education Act of 1965 prior to the effective date of this chapter shall remain in effect to the extent consistent with the purposes of this chapter.

GENERAL PROVISIONS

Sec. 558. (a) MAINTENANCE OF EFFORT.—(1)Except as provided in paragraph (2), a local educational agency may receive funds under this chapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 per centum of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The State educational agency shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by falling below 90 per centum of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The State educational agency may waive, for one fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, REGULAR NON-FEDERAL FUNDS.—A local educational agency may use funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection a local educational agency shall not be required to provide services under this chapter outside the regular classroom or school program.

(c) COMPARABILITY OF SERVICES.—(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and

local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

(2) A local educational agency shall be deemed to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established—

(A) a districtwide salary schedule;

(B) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

(d) EXCLUSION OF SPECIAL STATE AND LOCAL PROGRAM FUNDS.—For the purposes of determining compliance with the requirements of subsections (b) and (c), a local educational agency may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, if such programs are consistent with the purposes of this chapter.

(e) ALLOCATION OF FUNDS IN CERTAIN STATES.—In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency is authorized to make allocations of basic grants and special incentive grants directly to local educational agencies without regard to counties, if such allocations were made during fiscal year 1982, except that (1) precisely the same factors are used to determine the amount of such grants to counties, and (2) a local educational agency dissatisfied with such determination is afforded an opportunity for a hearing on the matter by the State educational agency.

APPENDIX E

FEDERAL RULES AND REGULATIONS SUPPORTING ECIA, CHAPTER 1

This section contains selected sections of the Rules and Regulations. These regulations took effect on January 3, 1983. They appeared in the *Federal Register*, Vol. 47, No. 224; Friday, November 19, 1982; Rules and Regulations; pages 52340—52366.

Consistent with the Administration's efforts to reduce regulatory burden while increasing state and local flexibility, these regulations address a limited number of issues. As a result, these regulations do not prescribe specific methods for implementing each of the changes that Chapter 1 makes in previous Title I requirements. . . . To the extent feasible, the Secretary will give deference to the SEA's interpretation of a Chapter 1 requirement if that interpretation is not inconsistent with the Chapter 1 statute, legislative history, and regulations.

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

Sec.
200.1 Purpose.
200.2 Applicability of regulations in this part.
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Authority: Secs. 552–558, 591–596 of Pub. L. 97–35, 95 Stat. 464–469, 480–482 (20 U.S.C. 3801–3807, 3871–3876), unless otherwise noted.

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

§ 200.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children selected in accordance with Section 556 of Chapter 1; and

(b) Children in local institutions for neglected or delinquent children.

(Sec. 552, 20 U.S.C. 3801; Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 200.2 Applicability of regulations in this part.

(a) The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Chapter 1.

(b) The regulations do not apply to Chapter 1 projects operated by State agencies for handicapped children, neglected or delinquent children, or migratory children of migratory agricultural workers or migratory fishermen.

(Secs. 552–558, 20 U.S.C. 3801–3807)

§ 200.3 Definitions.

(a) The definitions in Section 595 of the Education Consolidation and Improvement Act of 1981 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a), the following definitions apply to this part:

"Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

"Chapter 1" means Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency (SEA) for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Preschool children" means children who are—

(1) Below the age and grade level at which the LEA provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Private," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"Project area" means an attendance area in which a high concentration of children from low-income families reside, and that is selected by an LEA under Section 556(b) of Chapter 1, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Chapter 1 project.

"Public," as applied to an agency, organization, or institution, means under the administrative supervision or control of a government other than the Federal Government.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended.

(c) Additional definitions pertaining to the due process procedures in §§ 200.90–200.106 are contained in § 200.92 of these regulations.

(d) Any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of Chapter 1 has the same meaning as that term was given in Title I.

(e) The definitions in 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) do not apply to programs covered by this part.

(Secs. 552–558, 20 U.S.C. 3801–3807; Sec. 595, 20 U.S.C. 3875)

§ 200.4 Acronyms that are frequently used.

The following acronyms are used frequently in this part:

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(Secs. 552–558, 20 U.S.C. 3801–3807; Sec. 595, 20 U.S.C. 3875)

§ 200.5 Amount of funds available for Chapter 1 grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to LEAs under paragraph (b) of this section; and

(2) State administration of Chapter 1 programs.

(b) *Grants to LEAs.* The SEA, on the basis of county allocations provided by the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine, in accordance with §§ 200.21–200.23, 200.31, and 200.42, the amount of Chapter 1 funds that each LEA is eligible to receive under this part for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (b)(1) of this section.

(Sec. 554, 20 U.S.C. 3803)

§§ 200.6–200.9 [Reserved]

Application Procedure

§ 200.10 State assurances.

(a) A State that wishes to receive Chapter 1 funds for LEA projects designed to meet the special educational needs of educationally deprived children shall file with the Secretary assurances that meet the requirements in Section 435 (b)(2) and (b)(5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures.

(b) When an SEA files the assurances required in paragraph (a) of this section, the assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

(Sec. 396(a), 20 U.S.C. 3876(a))

§ 200.11 Payments for State administration.

The Secretary pays each State an

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amount to be spent by it for the proper and efficient performance of its duties under Chapter 1, provided that the amount paid by the Secretary for any fiscal year does not exceed the limits imposed by Section 554 (b) and (d) of Chapter 1.

(Sec. 554(b), 20 U.S.C. 3803(b); Sec. 554(d), 20 U.S.C. 3803(d))

§ 200.12 LEAs that may receive Chapter 1 funds.

An LEA that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a Chapter 1 project application that—

(a) Describes the projects to be conducted with the Chapter 1 funds; and

(b) Has been approved by the SEA.

(Sec. 556, 20 U.S.C. 3806)

§ 200.13 Submission of LEA project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit to the SEA an application for a Chapter 1 project to be conducted during a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The LEA's Chapter 1 project application must include—

(1) A description of the Chapter 1 project to be conducted;

(2) The assurances required under Section 556(b) of Chapter 1; and

(3) The assurances required by Section 436(b)(2) and (b)(3) of GEPA.

(c) *Annual updating of information in the Chapter 1 application.* An LEA shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the LEA has maintained its fiscal effort as required by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(d) *Further updating of information in the application.* When there are substantial changes in the number or needs of the children to be served or the services to be provided, the LEA shall submit a description of those changes to the SEA.

(Sec. 556, 20 U.S.C. 3806)

§ 200.14 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve an LEA's application for Chapter 1 funds, if that application meets the requirements in Section 556 of Chapter 1.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Sec. 556, 20 U.S.C. 3806)

§§ 200.15–200.19 [Reserved]

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

Basic Grants

§ 200.20 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Chapter 1 grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under Section 111(c) of Title I (Children to be counted) in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under Section 111(c) of Title I.

(b) The Secretary allocates funds appropriated for basic Chapter 1 grants among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Chapter 1 funds, and to the Secretary of the Interior for programs for Indian children.

(Sec. 554, 20 U.S.C. 3803)

§ 200.21 Determination by the Secretary of basic grants.

(a) If satisfactory census data by LEA are available from the Department of Commerce, the Secretary determines the amount of the basic Chapter 1 grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in Sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b)(1) If satisfactory census data by LEA are not available from the Department of Commerce, the Secretary determines the county aggregate amount of basic Chapter 1 grant funds that all LEAs in a county are eligible to receive under the method in Sections 111(a)(2)(B) (relating to amounts when data by LEA are not available and 111(c) of Title I.

(2) The county aggregate amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in Section 111(c)(2)(B) of Title I (relating to determining numbers of children)—are living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B of Title I (Programs for neglected or delinquent children operated by State agencies) for purposes of a grant to a State agency.

(c) If the amount appropriated for basic grants for any fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under Section 111(a)(3)(D) of Title I (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates an amount equal to one-half of the excess amount to SEAs on the basis of data from the 1975 Survey of Income and Education conducted by the Bureau of the Census.

(d) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under basic Chapter 1 grants, the Secretary ratably reduces, using the procedures in Section 193 of Title I (Adjustments where necessitated by appropriations), the amount available to each LEA or county.

(Sec. 554, 20 U.S.C. 3803)

§ 200.22 Allocation of county aggregate amounts by SEAs.

Except as provided in § 200.23, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 200.21, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part B of Title I (Programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) On the most recent reliable data available at the time of the determination, if the data referred to in paragraph (a)(1)(i) of this section are not

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available before January of the calendar year in which the Secretary's determination under § 200.21 is made.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families.* (1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner that it determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom each remaining LEA is providing a free public education; or

(B) Permit an LEA that submitted a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Chapter 1 funds generated by fewer than 10 children.

(Sec. 554, 20 U.S.C. 3803)

§ 200.23 Exceptions to county aggregate amounts.

In any State in which a large number of LEAs overlap county boundaries, the SEA may make allocations of basic grants and special incentive grants directly to LEAs without regard to counties, if such allocations were made during fiscal year 1982, except that—

(a) Precisely the same factors are to be used to determine the amount as were used to compute the county aggregate amount under § 200.21(b); and

(b) An LEA dissatisfied with the determination is to be afforded an opportunity for a hearing on the matter by the SEA.

(Sec. 558(e), 20 U.S.C. 3807(e))

§§ 200.24-200.29 [Reserved]

Special Incentive Grants

§ 200.30 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a basic Chapter 1 grant for any fiscal year shall be entitled to an additional grant under Section 116 of Title I (relating to special incentive grants) if the LEA is located in a State that has in effect for that fiscal year a State program that meets the requirements in Section 131(c) of Title I (which describes certain State and local compensatory education programs that are similar to Title I) and Section 116(a)(2)(B) of Title I (relating to the percentage of State funds expended in low-income areas).

(b)(1) An SEA that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining the eligibility data required by Section 116(b)(4) of Title I and the amount of State funds expended under the State program referred to in paragraph (a) of this section.

(2) Upon request, the SEA shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Sec. 554, 20 U.S.C. 3803)

§ 200.31 Amount of special incentive grants.

The amount of special incentive grants which the LEAs in a State will receive for any fiscal year is determined under the procedures in Section 116(b) and (c) of Title I.

(Sec. 554, 20 U.S.C. 3803)

§ 200.32 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State will receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.33 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds to carry out activities described in the approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Sec. 554, 20 U.S.C. 3803)

§§ 200.34-200.39 [Reserved]

Concentration Grants

§ 200.40 States to receive concentration grant funds.

A State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Chapter 1 for any fiscal year receives concentration grant funds from the amount of concentration grant funds available for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.41 Determinations of State and county concentration grants.

(a) The Secretary determines the amount of concentration grant funds that each county and State is eligible to receive by using the procedures in Section 117 of Title I (relating to the amount of the concentration grant).

(b) Each State that receives concentration grant funds receives at least one-quarter of one percent of the total concentration grant funds available for the fiscal year.

(1) A county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds

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is allocated the same proportion of the total concentration grant allocation as an eligible county that is located in a State that receives more than the minimum allocation. After each county has been allocated its proportionate share, the Secretary allocates to the SEA any concentration grant funds that remain unallocated.

(2) If no county in a State that receives the minimum allocation of concentration grant funds meets the statutory eligibility criteria, the Secretary allocates the total amount of the minimum allocation of concentration grant funds to the SEA.

(3) The SEAs that receive the minimum allocation of concentration grant funds may distribute the amount that has been allocated to the SEA under (b) (1) and (2) of this section—

(i) Among only those counties that receive basic grants and have high concentrations of children from low-income families. The SEA shall use the best available data on the current distribution of children from low-income families for selecting these counties; or

(ii) Among all counties in the State that receive basic grant funds based on the total number of children counted in each county for purposes of the basic grant statutory formula under the criteria in Section 111(c) of Title I.

(Sec. 554, 20 U.S.C. 3803)

§ 200.42 Determination of LEA allocations.

(a) The SEA shall distribute concentration grant funds among the LEAs in each county that receives those funds in accordance with § 200.41, on the basis of the current distribution within each of those counties of children aged 5 through 17. In making this distribution, the SEA shall use either of the following procedures, as applicable:

(1) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Chapter 1 basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under the basic grant formula.

(2) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the number of children counted under the Chapter 1 basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Sec. 554, 20 U.S.C. 3803)

§ 200.43 Method of awarding concentration grant funds.

The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.44 Use of concentration grant funds.

An LEA that receives concentration grant funds shall use those funds to carry out activities that are described in an approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Sec. 554, 20 U.S.C. 3803)

Reallocation

§ 200.45 Reallocation of chapter 1 funds by SEAs.

(a) During each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Chapter 1 funds that exceed the amount required to—

(i) Operate their Chapter 1 projects effectively during the curent fiscal year; and

(ii) Provide a prudent and justifiable reserve of Chapter 1 funds for operating their Chapter 1 projects effectively during the next fiscal year; and

(2) Notify each LEA identified under paragraph (a)(1) of this section of—

(i) The amount of that LEA's Chapter 1 funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Chapter 1 application to include approvable proposals for use of the excess funds.

(b)(1) If the LEA fails to amend properly its Chapter 1 application in response to the opportunity provided under paragraph (a) of this section, the SEA shall reallocate the excess Chapter 1 funds to LEAs that have the greatest need for such funds for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in Section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Sec. 554, 20 U.S.C. 3803)

§ 200.46 Reallocation of Chapter 1 funds by the Secretary.

If excess amounts of Chapter 1 funds remain after an SEA has completed the process in § 200.45, the Secretary distributes those excess funds among other States on the basis of need.

(Sec. 554, 20 U.S.C. 3803)

§ 200.47-200.48 [Reserved]

Subpart C—Project Requirements

§ 200.49 Selection of attendance areas.

An LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

(a) Conducted in attendance areas of the LEA having the highest concentrations of low-income children;

(b) Located in all attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children; or

(c) Designed to utilize part of the Chapter 1 funds for services that promise to provide significant help for all educationally deprived, low-income children served by the LEA.

(Sec. 556(b)(1), 20 U.S.C. 3805(b)(1))

§ 200.50 Annual needs assessment.

An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

(a) Identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools;

(b) Permits the selection of those educationally deprived children in the greatest need of special assistance; and

(c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 556(b)(2); 20 U.S.C. 3805(b)(2))

§ 200.51 Sufficient size, scope, and quality of project.

An LEA that receives Chapter 1 funds shall use those funds for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 200.52 Prohibition against using chapter 1 funds to provide general aid.

An LEA may use chapter 1 funds only for projects that are designed and implemented to meet the special educational needs of educationally deprived children, identified in accordance with Section 556(b)(2) of Chapter 1, and who are included in an application for assistance approved by the SEA.

(Sec. 552, 20 U.S.C. 3801; Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

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§ 200.53 Consultation with parents and teachers.

(a) An LEA that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with parents and teachers of the children being served, including parents and teachers of children in private schools.

(b) To meet the consultation requirement in paragraph (a) of this section, an LEA may, but is not required to, establish and use parent advisory councils.

(Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 200.54 Evaluation.

An LEA that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of its effectiveness in achieving the goals set for it. This evaluation must include—

(a) Objective measurements of educational achievement in basic skills; and

(b) A determination of whether improved performance is sustained over a period of more than one year.

(Sec. 556(b)(4), 20 U.S.C. 3805(b)(4))

§ 200.55 Allowable costs.

(a) An LEA may use Chapter 1 funds only to meet the costs of project activities that—

(1) Are designed to meet the special educational needs of educationally deprived children identified under Section 556(b)(2) of Chapter 1;

(2) Are included in an application approved by an SEA under § 200.14; and

(3) Comply with all applicable Chapter 1 requirements, including the assurances required under Section 556(b) of Chapter 1.

(b) The project activities referred to in paragraph (a) of this section may include the activities in Section 555(c) of Chapter 1.

(Sec. 555(c), 20 U.S.C. 3804(c))

§ 200.56 Recordkeeping requirements.

(a) An SEA or LEA that receives Chapter 1 funds shall use fiscal control and fund accounting procedures that will ensure proper disbursement of an accounting for Chapter 1 funds.

(b) The SEA or LEA shall keep—

(1) Records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-chapter 1 sources;

(2) Other records that are needed to facilitate an effective audit of the Chapter 1 project and that show compliance with Chapter 1 requirements; and

(3) Evaluation data collected under § 200.54.

(c) All records required under this section must be retained—

(1) For five years after completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 1 project have been completed; and

(3) Until all findings and recommendations arising out of any audits or reviews concerning the Chapter 1 project have been finally resolved.

(Sec. 555(d); 20 U.S.C. 3804(d); Sec. 556(b); 20 U.S.C. 3805(b); Sec. 596; 20 U.S.C. 3876(a); Sec. 437(a) of GEPA, 20 U.S.C. 1232f(a))

§ 200.57 Audits and access to records.

(a) *Federal responsibilities.* (1) For the purpose of evaluating and reviewing the use of Chapter 1 funds—

(i) The Inspector General of the Department, authorized Department officials, and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that—

(A) Are related to programs assisted with Chapter 1 funds; and

(B) Are in the possession, custody, or control of SEAs or LEAs; and

(ii) The Inspector General of the Department and the Comptroller General are authorized to conduct audits.

(2) An SEA shall repay to the Department the amount of Chapter 1 funds determined by the audit not to have been spent in accordance with applicable law.

(b) *State and local responsibilities.* (1) Any State or local government that receives Chapter 1 funds shall comply with the audit requirements in 34 CFR 74.62.

(2)(i) An LEA shall repay to the SEA the amount of Chapter 1 funds determined by the State not to have been spent in accordance with applicable law.

(ii) If the SEA recovers funds under paragraph (2)(i) of this section during the period in which the misspent Chapter 1 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 1 funds and—

(A) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in § 200.45; or

(B) Return the funds for proper use to the LEA from which they were received.

(iii) If the Chapter 1 funds that an SEA recovers under paragraph (b)(2)(i) of this section are no longer available for obligation under the terms of Section 412(b) of GEPA, the SEA shall return those funds to the Department.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 1243 note; Secs. 3, 4, and 6 of the Inspector General Act of 1978, Pub. L. 95-452 (5 U.S.C. App.); Sec. 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577 (42 U.S.C. 4212))

§ 200.58 Compromise of audit claims.

In deciding whether to compromise audit claims, or in recommending possible compromises to the Department of Justice, the Secretary may take into account—

(a) The cost of collecting the claim;

(b) The probability of the claim being upheld;

(c) The nature of the violation involved;

(d) Whether the practices of the SEA or LEA that resulted in the audit finding have been corrected;

(e) Whether the SEA or LEA is in all other respects in compliance with Chapter 1; and

(f) The extent to which the SEA or LEA agrees to use non-Federal funds to supplement Chapter 1 programs.

(Sec.555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 951 *et seq.*; 4 CFR Part 103)

§ 200.59 SEA rulemaking and other responsibilities.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that its LEAs comply with all applicable statutory and regulatory provisions pertaining to Chapter 1.

(b) *SEA rulemaking.* To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(1) Chapter 1;

(2) The regulations in this part; or

(3) other applicable Federal statutes and regulations.

(Sec. 556, 20 U.S.C. 3805; Sec 501, 20 U.S.C. 3871)

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Subpart D—Fiscal Requirements

§ 200.60 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.61, an LEA may receive its allocation of funds under Chapter 1 for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, "preceding fiscal year" means the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

Example. For funds first made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.61 is not appropriate, the SEA shall reduce the LEA's allocation of funds under Chapter 1 in the exact proportion to which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. In fiscal year 1983, an LEA fails to maintain effort because its fiscal effort in 1981 is less than 90 percent of its fiscal effort in 1980; then, in the following fiscal year (1984), the LEA's fiscal effort in the second preceding year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a), 20 U.S.C. 3807(a))

§ 200.61 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 200.60 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the LEA; or

(iii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of Chapter 1 funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. An LEA secures a waiver because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances; then, in the following fiscal year, the LEA's fiscal effort in the second preceding fiscal year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a)(3), 20 U.S.C. 3807(a)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 200.62 Supplement, not supplant.

(a) Except as provided in paragraph (b) of this section, an LEA may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An LEA may exclude, for the purpose of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent in carrying out special programs to meet the special educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(c) In order to demonstrate compliance with the supplement, not supplant requirement in paragraph (a) of this section, an LEA shall not be required to provide Chapter 1 services outside the regular classroom or school program.

(Sec. 558(b), 20 U.S.C. 3807(b); Sec. 558(d), 20 U.S.C. 3807(d))

§ 200.63 Comparability of services.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, an LEA may receive Chapter 1 funds only if it uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving Chapter 1 funds.

(b) Except as provided in paragraphs (c) and (d) of this section, if an LEA selects all its school attendance areas as project areas, the LEA may receive Chapter 1 funds only if it uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(c) Unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year shall not be included as a factor in determining compliance with the comparability of services requirements in paragraphs (a) and (b) of this section.

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out special programs to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(e) An LEA shall be deemed to have met the comparability requirements in paragraphs (a) and (b) of this section if it has filed with the SEA a written assurance that it has established—

(1) A districtwide salary schedule;

(2) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(3) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(Sec. 558(c), 20 U.S.C. 3807(c); Sec. 558(d), 20 U.S.C. 3807(d))

§ 200.64 Availability of funds.

(a) An SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding fiscal year.

(c)(1) Chapter 1 funds are obligated when an SEA or LEA—

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(i) Commits funds, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 1 funds allocated for a particular fiscal year as supporting those specific programmatic or administrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs is not the obligation of those funds.

(Sec. 596, 20 U.S.C. 3876; Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§§ 200.65–200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

§ 200.70 Responsibility of LEAs.

(a)(1) In consultation with private school officials, an LEA shall provide educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools with special educational services and arrangements as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70–200.75 and Section 557(a) of Chapter 1.

(2) If the LEA decides to serve educationally deprived, low-income children under Section 556(b)(1)(C) of Chapter 1, the LEA shall also provide Chapter 1 services to educationally deprived, low-income children in private schools as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70–200.75 and Section 557(a) of Chapter 1.

(b) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(c) The LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools.

(d)(1) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations.

(2) This employment or contract must be under the control and supervision of the public agency.

(e) In its application for Chapter 1 funds, the LEA shall make provision for services to educationally deprived children attending private elementary and secondary schools.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(5), 20 U.S.C. 3805(b)(5); Sec. 557(a), 20 U.S.C. 3806(a); Sec. 591(a), 20 U.S.C. 3871(a); Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.71 Factors used in determining equitable participation.

(a) *Equal expenditures.* Expenditures for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the LEA.

(b) *Services on an equitable basis.* The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(Sec. 557(a), 20 U.S.C. 3806(a); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 200.72 Funds not to benefit a private school.

(a) An LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools.

(b) An LEA shall use Chapter 1 funds to meet the special educational needs of children in private schools, but not for—

(1) The needs of the private schools; or

(2) The general needs of the children in the private schools.

(Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.73 Use of public school employees.

An LEA may use Chapter 1 funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 1 services designed for children in a private school; and

(b) If those services are not normally provided by the private school.

(Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.74 Equipment and supplies.

(a) To meet the requirements of Section 557(a) of Chapter 1, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 1 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Sec. 557(a), 20 U.S.C. 3806(a); Sec. 598(a), 20 U.S.C. 3878(a))

§ 200.75 Construction.

No Chapter 1 funds may be used for repairs, minor remodeling, or construction of private school facilities.

(Sec. 557(a), 20 U.S.C. 3806(a))

§§ 200.76–200.79 [Reserved]

Subpart F—Due Process Procedures

Procedures for Bypass

§ 200.80 Bypass—General.

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) Has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools.

(b) If the Secretary implements a bypass, the Secretary waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Chapter 1 services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allocations of Chapter 1 funds provided to the affected LEA and SEA. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(Sec. 557(b), 20 U.S.C. 3806(b))

§ 200.81 Notice by the Secretary.

(a) Before taking any final action to implement a bypass, the Secretary

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provides the affected LEA and SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the LEA and SEA to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the LEA and SEA that they have at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and may request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA and SEA by certified mail with return receipt requested.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.82 Bypass procedures.

Sections 200.83–200.85 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.83 Appointment and functions of a hearing officer.

(a) If an LEA or SEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery, or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, SEA, and representatives of the private school children of the time and place of the hearing.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.84 Hearing procedures.

(a) At the hearing, a transcript is taken. The LEA, SEA, and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, SEA, representatives of the private school children, or Department of Education officials.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.85 Post hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, SEA, representatives of the private school children, and the Secretary.

(b) The LEA, SEA, and representatives of the private school children each may submit written comments on the decision to the Secretary within 30 days from the receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§§ 200.86–200.89 [Reserved]

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Other Publications Available from the Department of Education

Guidelines for Local Educational Agencies for the Participation of Private School Students in ECIA, Chapter 1 Programs is one of approximately 500 publications that are available from the California State Department of Education. Some of the more recent publications or those most widely used are the following:

California Private School Directory	$9.00
California Public School Directory	12.50
California School Accounting Manual (1981)	2.50
Curriculum Design for Parenthood Education (1982)	4.00
Discussion Guide for the California School Improvement Program (1978)	1.50*†
Education of Gifted and Talented Pupils (1979)	2.50
Establishing School Site Councils: The California School Improvement Program (1977)	1.50*†
Foreign Language Framework for California Public Schools (1980)	2.50
Guide to School and Community Action (1981)	1.75
Guidelines and Procedures for Meeting the Specialized Health Care Needs of Students (1980)	2.50
Guidelines for Proficiency Tests (1982)	2.00
Guidelines for Local Educational Agencies for the Participation of Private Schools in ECIA, Chapter 1 Programs (1983)	3.25
Guidelines for School-Based Alcohol and Drug Abuse Programs (1981)	1.00
Handbook for Planning an Effective Mathematics Program (1982)	2.00*
Handbook for Planning an Effective Reading Program (1983)	1.50*
Handbook for Planning an Effective Writing Program (1983)	2.50*
History—Social Science Framework for California Public Schools (1981)	2.25
Improving the Human Environment of Schools (1979)	2.50
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Reading Framework for California Public Schools (1980)	1.75
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Toward More Human Schools (1981)	1.75
Visual and Performing Arts Framework for California Public Schools (1982)	3.25

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A complete list of publications available from the Department may be obtained by writing to the address listed above.

*Developed for implementation of School Improvement.
†Also available in Spanish at the price indicated.

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